

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 SPRING MAY CUSTER,

5 Petitioner

6 v.

7 ALLERY K. MARQUEZ-ESPINO, et al.,

8 Respondents

Case No.: 2:19-cv-01282-JAD-GWF

**Order Dismissing Improperly
Commenced Action**

9 Petitioner has not properly commenced this action by either paying the \$5.00 filing fee or
10 submitting a complete application for leave to proceed *in forma pauperis*. LSR 1-1 & 1-2. It
11 does not appear that dismissal without prejudice would materially impact the analysis of the
12 application of the limitation period in a promptly filed new action or otherwise cause substantial
13 prejudice.¹

14 IT IS THEREFORE ORDERED that this action is DISMISSED WITHOUT
15 PREJUDICE as improperly commenced.

16 IT IS FURTHER ORDERED that petitioner is DENIED a certificate of appealability, as
17 jurists of reason would not find dismissal of the petition as improperly commenced to be
18 debatable or wrong.

19 IT IS FURTHER ORDERED that petitioner may not file any further documents in this
20 case, save and except for a motion seeking reconsideration or relief from the judgment entered
21 herein. All further filings must be made in a new case with a new case number.
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23
24 ¹ The judgment of conviction challenged in the petition was entered on August 28, 2018.
25 Because petitioner did not file a direct appeal, the conviction became final on September 27,
26 2018, and the statute of limitations began to run the following day. Petitioner indicates, and the
27 state court records reflect, that petitioner filed a state court petition for habeas relief on April 2,
28 2019. See Eighth Judicial District Court Case No. A-19-792582-W (docket may be accessed via
a search for petitioner's name on <https://www.clarkcountycourts.us/portal> (last visited July 31,
2019). It is likely that the federal statute of limitations is being tolled while the proceedings on
this petition remain ongoing. Even if the limitations period were not being tolled, petitioner
would still have until September 27, 2019, to file her federal habeas petition.

The Clerk of Court is directed to SEND petitioner two copies of the inmate pauper application, along with a copy of the form for 28 U.S.C. § 2254 petitions, ENTER FINAL JUDGMENT accordingly, and CLOSE THIS CASE.

Dated: August 7, 2019

U.S. District Judge Jennifer A. Dorsey